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EXAMINER

LAZARO, DAVID R

ART UNIT PAPER NUMBER

2155

DATE MAILED: 04/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/924,283

Applicant(s)

FRIEND ET AL.

Examiner

David Lazaro

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-8, 19-23, 25 and 27-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-8, 19-23, 25 and 27-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. This office action is in response to the RCE filed 12/07/2005.
2. Claims 1, 19 and 27 were amended.
3. Claims 5, 9-18, 24 and 26 are canceled.
4. Claims 1-4, 6-8, 19-23, 25 and 27-30 are pending in this office action.

Response to Amendment

5. Applicant's arguments filed 12/07/2005 have been fully considered but they are not persuasive. See Response to Arguments.

Claim Rejections - 35 USC § 101

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claim 27 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 27 is not limited to tangible embodiments. In view of Applicant's disclosure, specification page 36, lines 1-11, the machine-readable medium recited in claim 27, is not limited to tangible embodiments, as it includes intangible elements (e.g., propagation media, "data signals embodied in a carrier wave"). As such, the claim is not limited to statutory subject matter and is therefore non-statutory.
8. For further clarification of this rejection, the examiner refers to the recent *Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility*

(available online at uspto.gov, or contact the examiner if you need assistance).

Essentially, the Interim Guidelines reflects the Office's position that an electro-magnetic signal does not fall within one of the four statutory classes of §101. The following is from Annex IV, paragraph (c), pages 55-57:

9. "Claims that recite nothing but the physical characteristics of a form of energy, such as a frequency, voltage, or the strength of a magnetic field, define energy or magnetism, per se, and as such are nonstatutory natural phenomena. O'Reilly, 56 U.S. (15 How.) at 112-14. Moreover, it does not appear that a claim reciting a signal encoded with functional descriptive material falls within any of the categories of patentable subject matter set forth in § 101. First, a claimed signal is clearly not a "process" under § 101 because it is not a series of steps. The other three § 101 classes of machine, compositions of matter and manufactures "relate to structural entities and can be grouped as 'product' claims in order to contrast them with process claims." 1 D. Chisum, Patents § 1.02 (1994). The three product classes have traditionally required physical structure or material. "The term machine includes every mechanical device or combination of mechanical device or combination of mechanical powers and devices to perform some function and produce a certain effect or result." Corning v. Burden, 56 U.S. (15 How.) 252, 267 (1854). A modern definition of machine would no doubt include electronic devices which perform functions. Indeed, devices such as flip-flops and computers are referred to in computer science as sequential machines. A claimed signal has no physical structure, does not itself perform any useful, concrete and tangible result and, thus, does not fit within the definition of a machine.

10. A "composition of matter" "covers all compositions of two or more substances and includes all composite articles, whether they be results of chemical union, or of mechanical mixture, or whether they be gases, fluids, powders or solids." *Shell Development Co. v. Watson*, 149 F. Supp. 279, 280, 113 USPQ 265, 266 (D.D.C. 1957), *aff'd*, 252 F.2d 861, 116 USPQ 428 (D.C. Cir. 1958). A claimed signal is not matter, but a form of energy, and therefore is not a composition of matter. The Supreme Court has read the term "manufacture" in accordance with its dictionary definition to mean "the production of articles for use from raw or prepared materials by giving to these materials new forms, qualities, properties, or combinations, whether by hand-labor or by machinery." *Diamond v. Chakrabarty*, 447 U.S. 303, 308, 206 USPQ 193, 196-97 (1980) (quoting *American Fruit Growers, Inc. v. Brogdex Co.*, 283 U.S. 1, 11, 8 USPQ 131, 133 (1931), which, in turn, quotes the Century Dictionary). Other courts have applied similar definitions. See *American Disappearing Bed Co. v. Arnaelsteen*, 182 F. 324, 325 (9th Cir. 1910), *cert. denied*, 220 U.S. 622 (1911). These definitions require physical substance, which a claimed signal does not have. Congress can be presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change. *Lorillard v. Pons*, 434 U.S. 575, 580 (1978). Thus, Congress must be presumed to have been aware of the interpretation of manufacture in *American Fruit Growers* when it passed the 1952 Patent Act. A manufacture is also defined as the residual class of product. 1 Chisum, § 1.02[3] (citing W. Robinson, *The Law of Patents for Useful Inventions* 270 (1890)).

11. A product is a tangible physical article or object, some form of matter, which a signal is not. That the other two product classes, machine and composition of matter, require physical matter is evidence that a manufacture was also intended to require physical matter. A signal, a form of energy, does not fall within either of the two definitions of manufacture. Thus, a signal does not fall within one of the four statutory classes of § 101. On the other hand, from a technological standpoint, a signal encoded with functional descriptive material is similar to a computer-readable memory encoded with functional descriptive material, in that they both create a functional interrelationship with a computer. In other words, a computer is able to execute the encoded functions, regardless of whether the format is a disk or a signal. These interim guidelines propose that such signal claims are ineligible for patent protection because they do not fall within any of the four statutory classes of § 101. Public comment is sought for further evaluation of this question.”.

Claim Rejections - 35 USC § 112

12. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

13. Claims 1, 19 and 27 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to

one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

14. The following subject matter is at issue:

- a. "the wireless device initiating synchronization with a server by transmitting the batch transaction update to the server" (from claim 1)
- b. "wherein the control logic initiates synchronization with the server by transmitting the batch transaction update to the server based upon the batch transaction update reaching a predetermined size" (from claim 19)
- c. "initiating synchronization with a server by transmitting the batch transaction update to the server" (from claim 27)

15. The specification does not describe a wireless device that initiates a synchronization with a server by transmitting the batch transaction update to the server. The specification does not give any specific details as to how the synchronization is initialized. More particularly, in the descriptions of batch transaction processing (pages 30-36), there is no description of synchronization initiation in relation to batch transaction updates. For these reasons, Claims 1, 19 and 27 fail to comply with the written description requirement.

Claim Rejections - 35 USC § 102

16. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

17. 1, 2, 4, 8, 27, 28 and 30 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 6,671,757 by Multer et al. (Multer).

18. With respect to Claim 1, Multer teaches a method comprising:

modifying a first electronic mail (e-mail) message (Col. 5 lines 22-48 and Col. 11 lines 7-22) at a wireless device (Col. 5 lines 11-30 and Col. 1 lines 23-35):

generating a first message transaction update indicating a modification to the first e-mail (Col. 11 lines 7-22);

modifying a second e-mail message (Col. 5 lines 22-48 and Col. 11 lines 7-22) at the wireless device (Col. 5 lines 11-30 and Col. 1 lines 23-35):

generating a second message transaction update indicating a modification to the second e-mail (Col. 11 lines 7-22);

detecting whether one or more of transaction conditions have occurred (Col. 11 lines 7-22 and Col. 12 lines 18-46 and Col. 35 lines 12-22);

combining the first message transaction update and the second message transaction update into a batch transaction update if the one or more of message

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transactions have occurred and based on a set of batch processing parameters (Col. 12 lines 18-46, Col. 13 lines 6-17, and Col. 35 lines 12-22); and

the wireless device initiating synchronization with a server by transmitting the batch transaction update to the server (Col. 12 lines 18-42, Col. 35 lines 12-23 and Col. 37 lines 40-64).

19. With respect to Claim 2, Multer teaches all the limitations of Claim 1 and further teaches the message transaction conditions is a length of time during which no message transactions are initiated at the wireless device (Col. 35 lines 12-22).

20. With respect to Claim 4, Multer teaches all the limitations of Claim 1 and further teaches the message transaction conditions is manual update selection by a user (Col. 35 lines 12-22).

21. With respect to Claim 8, Multer teaches all the limitations of Claim 1 and further teaches one of the message transaction updates comprise a deletion of an email message (Col. 26 lines 53-55 and Col. 11 line 18-22).

22. With respect to Claim 27, Multer teaches a machine-readable medium having stored thereon data representing sets of instructions, the sets of instructions which, when executed by a machine, cause the machine to:

modify a first electronic mail (e-mail) message (Col. 5 lines 22-48 and Col. 11 lines 7-22) at a wireless device (Col. 5 lines 11-30 and Col. 1 lines 23-35):

generate a first message transaction update indicating a modification to the first e-mail (Col. 11 lines 7-22);

modify a second e-mail message (Col. 5 lines 22-48 and Col. 11 lines 7-22) at the wireless device (Col. 5 lines 11-30 and Col. 1 lines 23-35);

generate a second message transaction update indicating a modification to the second e-mail (Col. 11 lines 7-22);

detect whether one or more of message transaction conditions have occurred (Col. 12 lines 18-46, Col. 13 lines 6-17, and Col. 35 lines 12-22);

combine the first message transaction update and the second message transaction update into a batch transaction update if the one or more of message transactions have occurred and based on a set of batch processing parameters (Col. 12 lines 18-46, Col. 13 lines 6-17, and Col. 35 lines 12-22); and

initiate synchronization with a server by transmitting the batch transaction update to the server (Col. 12 lines 18-42, Col. 35 lines 12-23 and Col. 37 lines 40-64).

23. With respect to Claim 28, Multer teaches all the limitations of Claim 27 and further teaches the message transaction conditions is a length of time during which no message transactions are initiated at the wireless device (Col. 35 lines 12-22).

24. With respect to Claim 30, Multer teaches all the limitations of Claim 27 and further teaches the message transaction conditions is manual update selection by a user (Col. 35 lines 12-22).

Claim Rejections - 35 USC § 103

25. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

26. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Multer in view of U.S. Patent 6,188,695 by Przybysz (Przybysz).

27. With respect to Claim 6, Multer teaches all the limitations of Claim 1 but does not explicitly disclose wherein one of the batch processing parameters comprises transmitting the batch transaction update after a predetermined number of message transaction updates have accrued. Przybysz teaches a batch processing parameter that comprises transmitting the batch transaction update after a predetermined number of message transaction updates have accrued (Col. 4 lines 51-55).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to take the method disclosed by Multer and modify it as indicated by Przybysz such that the method further comprises wherein one of the batch processing parameters comprises transmitting the batch transaction update after a predetermined number of message transaction updates have accrued. One would be motivated to have this, as it provides for a fast, efficient and convenient manner of performing data updates (In Przybysz: Col. 3 lines 3-6).

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28. Claims 7, 19, 20, 21, 23 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Multer in view of U.S. Patent 6,003,089 by Shaffer et al. (Shaffer).

29. With respect to Claim 7, Multer does not explicitly disclose wherein one of the batch processing parameters comprises transmitting the batch transaction update after the batch transaction update reaches a predetermined size.

Shaffer teaches combining transactions where the combined transactions are transmitted after the combined transaction reaches a predetermined size (Col. 9 lines 53-64).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to take the method disclosed by Multer and modify it as indicated by Shaffer such that the method further comprises wherein one of the batch processing parameters comprises transmitting the batch transaction update after the batch transaction update reaches a predetermined size. One would be motivated to have this, as it improves the efficiency of data transfer through a network (In Shaffer: Col. 3 lines 21-43 and Col. 4 lines 16-20).

30. With respect to Claim 19, Multer teaches a wireless device comprising:

control logic to modify a first electronic mail (e-mail) message (Col. 5 lines 22-48 and Col. 11 lines 7-22), generate a first message transaction update indicating a modification to the first e-mail (Col. 11 lines 7-22), modify a second e-mail message (Col. 5 lines 22-48 and Col. 11 lines 7-22), generate a second message transaction update indicating a modification to the second e-mail (Col. 11 lines 7-22), and to initiate synchronization with a server (Col. 35 lines 12-22);

message transaction detection logic to detect whether one or more of message transaction conditions have occurred (Col. 35 lines 12-22); and

batch processing logic to combine the first message transaction update and the second message transaction update into a batch transaction update, the combining based on one or more batch processing parameters (Col. 12 lines 18-46, Col. 13 lines 6-17, and Col. 35 lines 12-22)

wherein the control logic initiates synchronization with the server by transmitting the batch transaction update to the server (Col. 12 lines 18-42, Col. 35 lines 12-23 and Col. 37 lines 40-64).

Multer does not explicitly disclose transmitting the batch transaction update to the server based upon the batch transaction update reaching a predetermined size. Shaffer teaches combining transactions where the combined transactions are transmitted after the combined transaction reaches a predetermined size (Col. 9 lines 53-64).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to take the device disclosed by Multer and modify it as indicated by Shaffer such that the device further comprises transmitting the batch transaction update to the server based upon the batch transaction update reaching a predetermined size. One would be motivated to have this, as it improves the efficiency of data transfer through a network (In Shaffer: Col. 3 lines 21-43 and Col. 4 lines 16-20).

31. With respect to Claim 20, Multer further teaches wherein one of the message transaction conditions is a predetermined length of time during which synchronization

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updates between the wireless device and the server are not performed (In Multer: Col. 35 lines 12-22).

32. With respect to Claim 21, Multer further teaches wherein one of the message transaction conditions comprises manual update selection by a user (In Multer: Col. 35 lines 12-22).

33. With respect to Claim 23, Multer further teaches standard message processing logic to determine whether one or more standard message processing conditions met (In Multer: Col. 35 lines 49-65).

34. With respect to Claim 25, Mutler further teaches wherein one of the message transaction updates comprises a deletion of an email message (In Multer: Col. 26 lines 53-55 and Col. 11 line 18-22)

35. Claim 3 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Multer in view of U.S. Patent 6,675,203 by Herrod et al. (Herrod).

36. With respect to Claim 3, Multer teaches all the limitations of Claim 1 and further teaches message transaction conditions related to a length of time (Col. 35 lines 12-22).

Multer does not explicitly disclose conditions where the wireless device is out of range. Herrod teaches message transaction conditions related to a period of time a wireless devious is out of range (Col. 7 lines 22-36).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to take the method disclosed by Multer and modify it as indicated by Herrod such that the method further comprises wherein one of the message

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transaction conditions is a length of time that the wireless device is out of range. One would be motivated to have this, as there is need for preventing loss of data as well as keeping data "fresh" (In Herrod: Col. 3 line 20 - Col. 4 line 22).

37. With respect to Claim 29, Multer teaches all the limitations of Claim 27 and further teaches message transaction conditions related to a length of time (Col. 35 lines 12-22).

Multer does not explicitly disclose conditions where the wireless device is out of range. Herrod teaches message transaction conditions related to a period of time a wireless device is out of range (Col. 7 lines 22-36).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to take the medium disclosed by Multer and modify it as indicated by Herrod such that the medium further comprises wherein one of the message transaction conditions is a length of time that the wireless device is out of range. One would be motivated to have this, as there is need for preventing loss of data as well as keeping data "fresh" (In Herrod: Col. 3 line 20 - Col. 4 line 22).

38. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Multer in view of Shaffer as applied to claim 19 above, and further in view of Herrod.

39. With respect to Claim 22, Multer in view of Shaffer teaches all the limitations of Claim 19 and further teaches message transaction conditions related to a length of time (In Multer: Col. 35 lines 12-22).

Multer does not explicitly disclose conditions where the wireless device is out of range. Herrod teaches message transaction conditions related to a period of time a wireless device is out of range (Col. 7 lines 22-36).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to take the device disclosed by Multer in view of Shaffer and modify it as indicated by Herrod such that the device further comprises wherein one of the message transaction conditions comprises the wireless device being out of range from the server for a predetermined period of time. One would be motivated to have this, as there is need for preventing loss of data as well as keeping data "fresh" (In Herrod: Col. 3 line 20 - Col. 4 line 22).

Response to Arguments

40. Applicant's arguments filed 12/07/05 have been fully considered but they are not persuasive.

41. Applicants argue on page 7 of the remarks - "*Claim 1 of the present application recites the wireless device initiating synchronization with a server by transmitting the batch transaction update to the server. Applicants submit that Multer does not disclose or suggest such a feature. Multer discloses a delta module which performs synchronization operations based on triggers. See Multer at col. 13, 11. 7-8. However, Multer fails to disclose or suggest a wireless device initiating synchronization. Therefore, claim 1 is patentable over Multer.*"

d. Examiner's response - The examiner respectfully disagrees and asserts that the wireless device initiates the synchronization. As noted by the applicants, the delta module performs synchronization operations based on triggers, the

triggers being specifically related to the events module. However, applicants have not made it clear as to the significance of such evidence. Both the delta module and events module are part of device engine that is on each device of a user's personal information network (Col. 11 lines 40-59 and see Fig. 9a). In other words, the delta module is on the wireless device and is responsible in part for transmitting batch transaction updates to the server. Clearly the wireless device of Multer is the source of the synchronization initialization which includes the transmission of the batch transaction update to the server (Col. 37 lines 39-64). Applicants' arguments are not persuasive.

e. The examiner notes this response applies to applicants' remaining arguments as the arguments rely on the same reasoning.

Conclusion

42. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

43. U.S. Patent 5,115,392 by Takamoto et al. "Method and apparatus for multi-transaction batch processing" May 19, 1992. Discloses batch processing determined based on batch processing conditions. Additionally, batch updates occur after a certain number of transactions have occurred or after a certain length of time.

44. U.S. Patent 5,875,329 by Shan "Intelligent Batching of Distributed Messages" February 23, 1999. Discloses sending batch transactions when a predetermined number of batch transactions are in queue for sending.

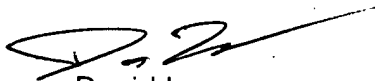
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45. U.S. Patent 6,934,766 by Russell "Method and apparatus for exchanging event information between computer systems that reduce perceived lag times by subtracting actual lag times from event playback time" August 23, 2005.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Lazaro whose telephone number is 571-272-3986. The examiner can normally be reached on 8:30-5:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar can be reached on 571-272-4006. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


David Lazaro
April 6, 2006


SALEH NAJJAR
SUPERVISORY PATENT EXAMINER